

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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2056.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-138126-09

Date: JANUARY 22, 2010

Re:

Legend:

Decedent =

Spouse =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Trust =

Attorney =

Dear :

This letter responds to a letter from your authorized representative dated August 17, 2009, and subsequent correspondence, requesting an extension of time under §' 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a "reverse" QTIP election under § 2652(a)(3) of the Internal Revenue Code and to allocate Decedent's available generation-skipping transfer (GST) tax exemption to two trusts.

Facts

Decedent established a revocable trust, Trust, on Date 1. Decedent died on Date 2, survived by Spouse.

Article THIRD of Trust provided for the creation of Family Trust utilizing Decedent's unified credit and a Marital Trust. Article FOURTH directed the trustee to divide the marital trust into two separate subtrusts, the Exempt Trust and the Nonexempt Trust, for GST tax purposes.

Attorney prepared Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and it was filed on Date 3. The Marital Trust was listed on Schedule M. No allocation of GST tax exemption was made on Schedule R. A supplemental Form 706 was filed on Date 4 to show additional assets. A Schedule R was included in the supplemental Form 706, but again no allocation was made on Schedule R.

An extension of time under §§ 301.9100-1 and 301.9100-3 is requested (1) to make a "reverse" QTIP election under § 2652(a)(3) with respect to the Exempt Trust, and (2) to allocate Decedent's GST exemption to the Exempt Trust and the Family Trust. To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to the trusts that would give rise to a GST tax liability.

### Law and Analysis

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied

by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2642(g)(1)(A) provides that the Secretary shall prescribe by regulation such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made (reverse QTIP election).

Section 26.2652-2(a), in part, that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2(b) provides that an automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer takes corrective action as defined in § 301.9100-2(c) within that 6-month extension period.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent's Estate is granted an extension of time of 60 days from the date of this letter to allocate Decedent's available GST exemption to the Family Trust and to the Exempt Marital Trust. The allocations will be effective as of the date of Decedent's death and will be based on the fair market value for federal estate tax purposes on the date of death. An extension of time is also granted to make the reverse QTIP election with respect to the Exempt Marital Trust.

The allocation of Decedent's GST exemption and the reverse QTIP election should be made on a supplemental Form 706 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 706.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes  
Copy of this letter